

Representative Jennifer Dailey-Provost proposes the following substitute bill:

LETHAL FORCE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies when a peace officer may use deadly force.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a law enforcement officer in certain situations to have an objectively reasonable belief that the use of deadly force is necessary; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-2-404, as last amended by Laws of Utah 2015, Chapter 47

76-2-408, as last amended by Laws of Utah 2019, Chapter 395

Be it enacted by the Legislature of the state of Utah:



26 Section 1. Section **76-2-404** is amended to read:

27 **76-2-404. Law enforcement officer use of deadly force.**

28 [~~(1) A peace officer, or any person acting by the officer's command in providing aid~~
29 ~~and assistance, is justified in using deadly force when:]~~

30 (1) As used in this section:

31 (a) "Deadly force" means force that creates or is likely to create, or that the individual
32 using the force intends to create, a substantial likelihood of death or serious bodily injury to an
33 individual.

34 (b) "Necessary" means that, based on the totality of circumstances, an objectively
35 reasonable officer in the same situation would conclude that no reasonably feasible and
36 effective alternative appears to exist that would prevent death or serious bodily injury to the
37 officer or to an individual other than the individual against whom force would be used.

38 (c) "Officer" means an officer described in Section [53-13-102](#).

39 (d) "Serious bodily injury" means the same as that term is defined in Section [76-1-601](#).

40 (e) (i) "Totality of circumstances" means all facts and information known or reasonably
41 perceived by the officer at the time the decision is made, including consideration of:

42 (A) the severity of the crime at issue;

43 (B) the nature and immediacy of the apparent threat posed by the individual;

44 (C) the conduct of the individual and the officer;

45 (D) whether the speed or uncertainty of events reasonably requires quick judgment by
46 the officer regarding whether deadly force is necessary; and

47 (E) any other factors the finder of fact determines are relevant.

48 (ii) "Totality of circumstances" does not include consideration of facts or information:

49 (A) unknown to the officer; or

50 (B) known or reasonably perceived by the officer only after the decision regarding
51 deadly force is made.

52 (2) The defense of justification applies to the use of deadly force by an officer, or an
53 individual acting by the officer's command in providing aid and assistance, when:

54 (a) the officer is acting in obedience to and in accordance with the judgment of a
55 competent court in executing a penalty of death under Subsection [77-18-5.5](#)(2), (3), or (4);

56 (b) effecting an arrest or preventing an escape from custody following an arrest,

57 [~~where~~] if:

58 (i) the officer reasonably believes that deadly force is necessary to prevent the arrest
59 from being defeated by escape; and

60 [~~(i)~~] (ii) (A) the officer has probable cause to believe that the suspect has committed a
61 felony offense involving the infliction or threatened infliction of death or serious bodily injury;
62 or

63 [~~(i)~~] (B) the officer has probable cause to believe the suspect poses a threat of death or
64 serious bodily injury to the officer or to [~~others~~] an individual other than the suspect if
65 apprehension is delayed; or

66 (c) the officer reasonably believes that the use of deadly force is necessary to prevent
67 death or serious bodily injury to the officer or [~~another person~~] an individual other than the
68 suspect.

69 [~~(2)~~] (3) If feasible, a verbal warning should be given by the officer prior to any use of
70 deadly force under Subsection [~~(1)~~] (2)(b) or [~~(1)~~] (2)(c).

71 Section 2. Section **76-2-408** is amended to read:

72 **76-2-408. Officer use of force -- Investigations.**

73 (1) As used in this section:

74 (a) "Dangerous weapon" means a firearm or an object that in the manner of its use or
75 intended use is capable of causing death or serious bodily injury to a person.

76 (b) "Deadly force" means a force that creates or is likely to create, or that the person
77 using the force intends to create, a substantial likelihood of death or serious bodily injury to a
78 person.

79 (c) "In custody" means in the legal custody of a state prison, county jail, or other
80 correctional facility, including custody that results from:

81 (i) a detention to secure attendance as a witness in a criminal case;

82 (ii) an arrest for or charging with a crime and committing for trial;

83 (iii) committing for contempt, upon civil process, or by other authority of law; or

84 (iv) sentencing to imprisonment on conviction of a crime.

85 (d) "Investigating agency" means a law enforcement agency, the county or district
86 attorney's office, or an interagency task force composed of officers from multiple law
87 enforcement agencies.

88 (e) "Officer" means [~~the same as the term "law enforcement officer" as that term is~~
89 ~~defined in Section 53-13-103]~~ an officer described in Section 53-13-102.

90 (f) "Officer-involved critical incident" means any of the following:

91 (i) an officer's use of deadly force;

92 (ii) an officer's use of a dangerous weapon against a person [~~that~~] who causes injury to
93 any person;

94 (iii) death or serious bodily injury to any person, other than the officer, resulting from
95 an officer's:

96 (A) use of a motor vehicle while the officer is on duty; or

97 (B) use of a government vehicle while the officer is off duty;

98 (iv) the death of a person who is in custody, but excluding a death that is the result of
99 disease, natural causes, or conditions that have been medically diagnosed prior to the person's
100 death; or

101 (v) the death of or serious bodily injury to a person not in custody, other than an
102 officer, resulting from an officer's attempt to prevent a person's escape from custody, to make
103 an arrest, or otherwise to gain physical control of a person.

104 (g) "Serious bodily injury" means the same as that term is defined in Section 76-1-601.

105 (2) When an officer-involved critical incident occurs:

106 (a) upon receiving notice of the officer-involved critical incident, the law enforcement
107 agency having jurisdiction where the incident occurred shall, as soon as practical, notify the
108 county or district attorney having jurisdiction where the incident occurred; and

109 (b) the chief executive of the law enforcement agency and the county or district
110 attorney having jurisdiction where the incident occurred shall:

111 (i) jointly designate an investigating agency for the officer-involved critical incident;
112 and

113 (ii) designate which agency is the lead investigative agency if the officer-involved
114 critical incident involves multiple investigations.

115 (3) The investigating agency under Subsection (2) may not be the law enforcement
116 agency employing the officer who is alleged to have caused or contributed to the
117 officer-involved critical incident.

118 (4) This section does not preclude the law enforcement agency employing an officer

119 alleged to have caused or contributed to the officer-involved critical incident from conducting
120 an internal administrative investigation.

121 (5) Each law enforcement agency that is part of or administered by the state or any of
122 [~~its~~] the state's political subdivisions shall[, ~~by December 31, 2015,~~] adopt and post on [~~its~~] the
123 agency's publicly accessible website:

124 (a) the policies and procedures the agency has adopted to select the investigating
125 agency if an officer-involved critical incident occurs in [~~its~~] the agency's jurisdiction and one of
126 [~~its~~] the agency's officers is alleged to have caused or contributed to the officer-involved
127 incident; and

128 (b) the protocols the agency has adopted to ensure that any investigation of
129 officer-involved incidents occurring in [~~its~~] the agency's jurisdiction are conducted
130 professionally, thoroughly, and impartially.